

**Introduced by Senators Padilla, Benoit, Calderon, Corbett, Cox,
Kehoe, Lowenthal, Simitian, Strickland, Wiggins, and Wright**

February 27, 2009

An act to amend Sections 25301 and 25302 of the Public Resources Code, and to amend Sections 392.1 and 454.5 of the Public Utilities Code, relating to the Public Utilities Commission.

LEGISLATIVE COUNSEL'S DIGEST

SB 712, as introduced, Padilla. Public Utilities Commission: Division of Ratepayer Advocates.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities and can establish its own procedures, subject to statutory limitations or directions and constitutional requirements of due process. Existing law establishes a division within the Public Utilities Commission, known as the Division of Ratepayer Advocates, formerly called the Office of Ratepayer Advocates, to represent the interests of public utility customers and subscribers, with the goal of obtaining the lowest possible rate for service consistent with reliable and safe service levels.

This bill would conform certain statutory references to the former Office of Ratepayer Advocates to the division's current name.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 25301 of the Public Resources Code is
2 amended to read:

25301. (a) At least every two years, the commission shall conduct assessments and forecasts of all aspects of energy industry supply, production, transportation, delivery and distribution, demand, and prices. The commission shall use these assessments and forecasts to develop energy policies that conserve resources, protect the environment, ensure energy reliability, enhance the state's economy, and protect public health and safety. To perform these assessments and forecasts, the commission may require submission of demand forecasts, resource plans, market assessments, and related outlooks from electric and natural gas utilities, transportation fuel and technology suppliers, and other market participants. These assessments and forecasts shall be done in consultation with the appropriate state and federal agencies including, but not limited to, the Public Utilities Commission, the Office *Division* of Ratepayer Advocates, the Air Resources Board, the Electricity Oversight Board, the Independent System Operator, the Department of Water Resources, the California Consumer Power and Conservation Financing Authority, the Department of Transportation, and the Department of Motor Vehicles.

(b) In developing the assessments and forecasts prepared pursuant to subdivision (a), the commission shall do all of the following:

(1) Provide information about the performance of energy industries.

(2) Develop and maintain the analytical capability sufficient to answer inquiries about energy issues from government, market participants, and the public.

(3) Analyze and develop energy policies.

(4) Provide an analytical foundation for regulatory and policy decisionmaking.

(5) Facilitate efficient and reliable energy markets.

SEC. 2. Section 25302 of the Public Resources Code is amended to read:

25302. (a) Beginning November 1, 2003, and every two years thereafter, the commission shall adopt an integrated energy policy report. This integrated report shall contain an overview of major energy trends and issues facing the state, including, but not limited to, supply, demand, pricing, reliability, efficiency, and impacts on public health and safety, the economy, resources, and the

environment. Energy markets and systems shall be grouped and assessed in three subsidiary volumes:

- (1) Electricity and natural gas markets.
- (2) Transportation fuels, technologies, and infrastructure.
- (3) Public interest energy strategies.

(b) The commission shall compile the integrated energy policy report prepared pursuant to subdivision (a) by consolidating the analyses and findings of the subsidiary volumes in paragraphs (1), (2), and (3) of subdivision (a). The integrated energy policy report shall present policy recommendations based on an indepth and integrated analysis of the most current and pressing energy issues facing the state. The analyses supporting this integrated energy policy report shall explicitly address interfuel and intermarket effects to provide a more informed evaluation of potential tradeoffs when developing energy policy across different markets and systems.

(c) The integrated energy policy report shall include an assessment and forecast of system reliability and the need for resource additions, efficiency, and conservation that considers all aspects of energy industries and markets that are essential for the state economy, general welfare, public health and safety, energy diversity, and protection of the environment. This assessment shall be based on determinations made pursuant to this chapter.

(d) Beginning November 1, 2004, and every two years thereafter, the commission shall prepare an energy policy review to update analyses from the integrated energy policy report prepared pursuant to subdivisions (a), (b), and (c), or to raise energy issues that have emerged since the release of the integrated energy policy report. The commission may also periodically prepare and release technical analyses and assessments of energy issues and concerns to provide timely and relevant information for the Governor, the Legislature, market participants, and the public.

(e) In preparation of the report, the commission shall consult with the following entities: the Public Utilities Commission, the Office *Division* of Ratepayer Advocates, the State Air Resources Board, the Electricity Oversight Board, the Independent System Operator, the Department of Water Resources, the California Consumer Power and Conservation Financing Authority, the Department of Transportation, and the Department of Motor Vehicles, and any federal, state, and local agencies it deems

1 necessary in preparation of the integrated energy policy report. To
2 assure collaborative development of state energy policies, these
3 agencies shall make a good faith effort to provide data, assessment,
4 and proposed recommendations for review by the commission.

5 (f) The commission shall provide the report to the Public
6 Utilities Commission, the ~~Office~~ *Division* of Ratepayer Advocates,
7 the State Air Resources Board, the Electricity Oversight Board,
8 the Independent System Operator, the Department of Water
9 Resources, the California Consumer Power and Conservation
10 Financing Authority, and the Department of Transportation. For
11 the purpose of ensuring consistency in the underlying information
12 that forms the foundation of energy policies and decisions affecting
13 the state, those entities shall carry out their energy-related duties
14 and responsibilities based upon the information and analyses
15 contained in the report. If an entity listed in this subdivision objects
16 to information contained in the report, and has a reasonable basis
17 for that objection, the entity shall not be required to consider that
18 information in carrying out its energy-related duties.

19 (g) The commission shall make the report accessible to state,
20 local, and federal entities and to the general public.

21 SEC. 3. Section 392.1 of the Public Utilities Code is amended
22 to read:

23 392.1. (a) The commission shall compile and regularly update
24 the following information: names and contact numbers of registered
25 providers, information to assist consumers in making service
26 choices, and the number of customer complaints against specific
27 providers in relation to the number of customers served by those
28 providers and the disposition of those complaints. To facilitate this
29 function, registered entities shall file with the commission
30 information describing the terms and conditions of any standard
31 service plan made available to residential and small commercial
32 customers. The commission shall adopt a standard format for this
33 filing. The commission shall maintain and make generally available
34 a list of entities offering electrical services operating in California.
35 This list shall include all registered providers and those providers
36 not required to be registered who request the commission to be
37 included in the list. The commission shall, upon request, make this
38 information available at no charge. Notwithstanding any other
39 provision of law, public agencies which are registered entities shall
40 be required to disclose their terms and conditions of service

1 contracts only to the same extent that other registered entities
2 would be required to disclose the same or similar service contracts.

3 (b) The commission shall issue public alerts about companies
4 attempting to provide electric service in the state in an unauthorized
5 or fraudulent manner as defined in subdivision (b) of Section
6 394.25.

7 (c) The commission shall direct the ~~Office~~ *Division* of Ratepayer
8 Advocates to collect and analyze information provided pursuant
9 to subdivision (a) for purposes of preparing easily understandable
10 informational guides or other tools to help residential and small
11 commercial customers understand how to evaluate competing
12 electric service options. In implementing these provisions, the
13 commission shall direct the ~~Office~~ *Division* of Ratepayer Advocates
14 to pay special attention to ensuring that customers, especially those
15 with limited-English-speaking ability or other disadvantages when
16 dealing with marketers, receive correct, reliable, and easily
17 understood information to help them make informed choices. The
18 ~~Office~~ *Division* of Ratepayer Advocates shall not make specific
19 recommendations or rank the relative attractiveness of specific
20 service offerings of registered providers of electric services.

21 SEC. 4. Section 454.5 of the Public Utilities Code is amended
22 to read:

23 454.5. (a) The commission shall specify the allocation of
24 electricity, including quantity, characteristics, and duration of
25 electricity delivery, that the Department of Water Resources shall
26 provide under its power purchase agreements to the customers of
27 each electrical corporation, which shall be reflected in the electrical
28 corporation's proposed procurement plan. Each electrical
29 corporation shall file a proposed procurement plan with the
30 commission not later than 60 days after the commission specifies
31 the allocation of electricity. The proposed procurement plan shall
32 specify the date that the electrical corporation intends to resume
33 procurement of electricity for its retail customers, consistent with
34 its obligation to serve. After the commission's adoption of a
35 procurement plan, the commission shall allow not less than 60
36 days before the electrical corporation resumes procurement
37 pursuant to this section.

38 (b) An electrical corporation's proposed procurement plan shall
39 include, but not be limited to, all of the following:

1 (1) An assessment of the price risk associated with the electrical
2 corporation's portfolio, including any utility-retained generation,
3 existing power purchase and exchange contracts, and proposed
4 contracts or purchases under which an electrical corporation will
5 procure electricity, electricity demand reductions, and
6 electricity-related products and the remaining open position to be
7 served by spot market transactions.

8 (2) A definition of each electricity product, electricity-related
9 product, and procurement related financial product, including
10 support and justification for the product type and amount to be
11 procured under the plan.

12 (3) The duration of the plan.

13 (4) The duration, timing, and range of quantities of each product
14 to be procured.

15 (5) A competitive procurement process under which the
16 electrical corporation may request bids for procurement-related
17 services, including the format and criteria of that procurement
18 process.

19 (6) An incentive mechanism, if any incentive mechanism is
20 proposed, including the type of transactions to be covered by that
21 mechanism, their respective procurement benchmarks, and other
22 parameters needed to determine the sharing of risks and benefits.

23 (7) The upfront standards and criteria by which the acceptability
24 and eligibility for rate recovery of a proposed procurement
25 transaction will be known by the electrical corporation prior to
26 execution of the transaction. This shall include an expedited
27 approval process for the commission's review of proposed contracts
28 and subsequent approval or rejection thereof. The electrical
29 corporation shall propose alternative procurement choices in the
30 event a contract is rejected.

31 (8) Procedures for updating the procurement plan.

32 (9) A showing that the procurement plan will achieve the
33 following:

34 (A) The electrical corporation will, in order to fulfill its unmet
35 resource needs and in furtherance of Section 701.3, until a 20
36 percent renewable resources portfolio is achieved, procure
37 renewable energy resources with the goal of ensuring that at least
38 an additional 1 percent per year of the electricity sold by the
39 electrical corporation is generated from renewable energy
40 resources, provided sufficient funds are made available pursuant

1 to Sections 399.6 and 399.15, to cover the above-market costs for
2 new renewable energy resources.

3 (B) The electrical corporation will create or maintain a
4 diversified procurement portfolio consisting of both short-term
5 and long-term electricity and electricity-related and demand
6 reduction products.

7 (C) The electrical corporation will first meet its unmet resource
8 needs through all available energy efficiency and demand reduction
9 resources that are cost effective, reliable, and feasible.

10 (10) The electrical corporation's risk management policy,
11 strategy, and practices, including specific measures of price
12 stability.

13 (11) A plan to achieve appropriate increases in diversity of
14 ownership and diversity of fuel supply of nonutility electrical
15 generation.

16 (12) A mechanism for recovery of reasonable administrative
17 costs related to procurement in the generation component of rates.

18 (c) The commission shall review and accept, modify, or reject
19 each electrical corporation's procurement plan. The commission's
20 review shall consider each electrical corporation's individual
21 procurement situation, and shall give strong consideration to that
22 situation in determining which one or more of the features set forth
23 in this subdivision shall apply to that electrical corporation. A
24 procurement plan approved by the commission shall contain one
25 or more of the following features, provided that the commission
26 may not approve a feature or mechanism for an electrical
27 corporation if it finds that the feature or mechanism would impair
28 the restoration of an electrical corporation's creditworthiness or
29 would lead to a deterioration of an electrical corporation's
30 creditworthiness:

31 (1) A competitive procurement process under which the
32 electrical corporation may request bids for procurement-related
33 services. The commission shall specify the format of that
34 procurement process, as well as criteria to ensure that the auction
35 process is open and adequately subscribed. Any purchases made
36 in compliance with the commission-authorized process shall be
37 recovered in the generation component of rates.

38 (2) An incentive mechanism that establishes a procurement
39 benchmark or benchmarks and authorizes the electrical corporation
40 to procure from the market, subject to comparing the electrical

1 corporation's performance to the commission-authorized
2 benchmark or benchmarks. The incentive mechanism shall be
3 clear, achievable, and contain quantifiable objectives and standards.
4 The incentive mechanism shall contain balanced risk and reward
5 incentives that limit the risk and reward of an electrical corporation.

6 (3) Upfront achievable standards and criteria by which the
7 acceptability and eligibility for rate recovery of a proposed
8 procurement transaction will be known by the electrical corporation
9 prior to the execution of the bilateral contract for the transaction.

10 The commission shall provide for expedited review and either
11 approve or reject the individual contracts submitted by the electrical
12 corporation to ensure compliance with its procurement plan. To
13 the extent the commission rejects a proposed contract pursuant to
14 this criteria, the commission shall designate alternative procurement
15 choices obtained in the procurement plan that will be recoverable
16 for ratemaking purposes.

17 (d) A procurement plan approved by the commission shall
18 accomplish each of the following objectives:

19 (1) Enable the electrical corporation to fulfill its obligation to
20 serve its customers at just and reasonable rates.

21 (2) Eliminate the need for after-the-fact reasonableness reviews
22 of an electrical corporation's actions in compliance with an
23 approved procurement plan, including resulting electricity
24 procurement contracts, practices, and related expenses. However,
25 the commission may establish a regulatory process to verify and
26 assure that each contract was administered in accordance with the
27 terms of the contract, and contract disputes which may arise are
28 reasonably resolved.

29 (3) Ensure timely recovery of prospective procurement costs
30 incurred pursuant to an approved procurement plan. The
31 commission shall establish rates based on forecasts of procurement
32 costs adopted by the commission, actual procurement costs
33 incurred, or combination thereof, as determined by the commission.
34 The commission shall establish power procurement balancing
35 accounts to track the differences between recorded revenues and
36 costs incurred pursuant to an approved procurement plan. The
37 commission shall review the power procurement balancing
38 accounts, not less than semiannually, and shall adjust rates or order
39 refunds, as necessary, to promptly amortize a balancing account,
40 according to a schedule determined by the commission. Until

1 January 1, 2006, the commission shall ensure that any
2 overcollection or undercollection in the power procurement
3 balancing account does not exceed 5 percent of the electrical
4 corporation's actual recorded generation revenues for the prior
5 calendar year excluding revenues collected for the Department of
6 Water Resources. The commission shall determine the schedule
7 for amortizing the overcollection or undercollection in the
8 balancing account to ensure that the 5 percent threshold is not
9 exceeded. After January 1, 2006, this adjustment shall occur when
10 deemed appropriate by the commission consistent with the
11 objectives of this section.

12 (4) Moderate the price risk associated with serving its retail
13 customers, including the price risk embedded in its long-term
14 supply contracts, by authorizing an electrical corporation to enter
15 into financial and other electricity-related product contracts.

16 (5) Provide for just and reasonable rates, with an appropriate
17 balancing of price stability and price level in the electrical
18 corporation's procurement plan.

19 (e) The commission shall provide for the periodic review and
20 prospective modification of an electrical corporation's procurement
21 plan.

22 (f) The commission may engage an independent consultant or
23 advisory service to evaluate risk management and strategy. The
24 reasonable costs of any consultant or advisory service is a
25 reimbursable expense and eligible for funding pursuant to Section
26 631.

27 (g) The commission shall adopt appropriate procedures to ensure
28 the confidentiality of any market sensitive information submitted
29 in an electrical corporation's proposed procurement plan or
30 resulting from or related to its approved procurement plan,
31 including, but not limited to, proposed or executed power purchase
32 agreements, data request responses, or consultant reports, or any
33 combination, provided that the ~~Office~~ *Division* of Ratepayer
34 Advocates and other consumer groups that are nonmarket
35 participants shall be provided access to this information under
36 confidentiality procedures authorized by the commission.

37 (h) Nothing in this section alters, modifies, or amends the
38 commission's oversight of affiliate transactions under its rules and
39 decisions or the commission's existing authority to investigate and
40 penalize an electrical corporation's alleged fraudulent activities,

1 or to disallow costs incurred as a result of gross incompetence,
2 fraud, abuse, or similar grounds. Nothing in this section expands,
3 modifies, or limits the State Energy Resources Conservation and
4 Development Commission's existing authority and responsibilities
5 as set forth in Sections 25216, 25216.5, and 25323 of the Public
6 Resources Code.

7 (i) An electrical corporation that serves less than 500,000 electric
8 retail customers within the state may file with the commission a
9 request for exemption from this section, which the commission
10 shall grant upon a showing of good cause.

11 (j) (1) Prior to its approval pursuant to Section 851 of any
12 divestiture of generation assets owned by an electrical corporation
13 on or after the date of enactment of the act adding this section, the
14 commission shall determine the impact of the proposed divestiture
15 on the electrical corporation's procurement rates and shall approve
16 a divestiture only to the extent it finds, taking into account the
17 effect of the divestiture on procurement rates, that the divestiture
18 is in the public interest and will result in net ratepayer benefits.

19 (2) Any electrical corporation's procurement necessitated as a
20 result of the divestiture of generation assets on or after the effective
21 date of the act adding this subdivision shall be subject to the
22 mechanisms and procedures set forth in this section only if its
23 actual cost is less than the recent historical cost of the divested
24 generation assets.

25 (3) Notwithstanding paragraph (2), the commission may deem
26 proposed procurement eligible to use the procedures in this section
27 upon its approval of asset divestiture pursuant to Section 851.